Kavanagh v. *Barber*, 131 N. Y. 211, 30 N. E. 235. *Contra, Fort Worth & Rio Grande Ry. Co.* v. *Glenn*, 97 Tex. 586, 80 S. W. 992. See *Towaliga Falls Power Co.* v. *Sims*, 6 Ga. App. 749, 752, 753, 65 S. E. 844, 846. If the plaintiff's injury were occasioned by an act of the defendant and the defendant could have foreseen the injurious quality of the act, there should be a recovery on the ordinary principles of negligence. *Hunt* v. *Lowell Gas Light Co.*, 8 Allen (Mass.) 169. The plaintiff's protection would be complete if there is imposed on the defendant an affirmative duty to take reasonable measures to maintain his premises in a condition which would not cause injury to outsiders.

PUBLIC-SERVICE COMPANIES — REGULATION OF PUBLIC-SERVICE COMPANIES — CONTRACT FOR DIVISION OF TERRITORY: WHETHER AN ILLEGAL RESTRAINT OF COMPETITION. — A state public-utilities law empowered a commission to prevent exorbitant charges. A statute prohibited agreements to restrain competition in the supply of any commodity of general use. The plaintiff and the defendant, two competing telephone companies, entered into a contract to divide the territory. *Held*, that the contract is specifically enforceable. *McKinley Tel. Co.* v. *Cumberland Tel. Co.*, 140 N. W. 38 (Wis.).

Apart from statutes such contracts between public-service companies are generally held void, as being in restraint of trade. *South Chicago City Ry. Co.* v. *Calumet Electric St. Ry. Co.*, 171 Ill. 391, 49 N. E. 576; *Chicago Gas Light & Coke Co.* v. *People's Gas Light & Coke Co.*, 121 Ill. 530, 13 N. E. 169. But *cf. Ives* v. *Smith*, 3 N. Y. Supp. 645, 654. Pooling agreements are equally objectionable. *Chicago, M. & St. P. Ry. Co.* v. *Wabash, St. L. & P. Ry. Co.*, 61 Fed. 993; *Texas & P. Ry. Co.* v. *Southern Pacific Ry. Co.*, 41 La. Ann. 970, 6 So. 888. But *cf. Manchester & L. R. Co.* v. *Concord R. Co.*, 66 N. H. 100, 20 Atl. 383. It is undoubtedly the theory of the common law that competition is essential to trade. See *Hooker* v. *Vandewater*, 4 Den. (N. Y.) 349, 353. But see *Kellogg* v. *Larkin*, 3 Chand. (Wis.) 133, 159. In private business this theory is still unquestioned by the courts, but experience has not vindicated the wisdom of its full application to public callings. The field in any given case must necessarily be very limited, and fierce competition between a few great public-service corporations may often result disastrously for the public. See *Averill* v. *Southern Ry. Co.*, 75 Fed. 736, 738; *Hare* v. *London & N. W. Ry. Co.*, 2 Johns. & H. 80, 103. At least in the case of telephone companies, a regulated monopoly furnishes better service. When a legal restraint was placed on all monopolies by the common law, the uncertain condition of public-service law caused the courts to overlook the fact that in the case of public-service companies, the absolute prohibition of unreasonable rates could have furnished a sure means of preventing the dangers of monopoly. See 2 MORAWETZ, PRIVATE CORPORATIONS, 2 ed., § 1131. When modern legislation has made this means of regulation effective by providing for public-utilities commissions, it seems reasonable for the courts to make an exception to the common-law rule in the case of public-service companies. *Weld* v. *Gas & Electric Light Commissioners*, 197 Mass. 556, 84 N. E. 101.

PUBLIC-SERVICE COMPANIES — WHAT CALLINGS ARE PUBLIC — CEMETERIES. — The respondent corporation maintained a cemetery, for several years serving the general public, both whites and negroes, without discrimination. Thereafter a rule was made that no further lots should be sold to negroes. A negro petitioned for a writ of mandamus to compel the cemetery company to accept the body of his negro wife for burial. *Held*, that the petition was properly dismissed. *People ex rel. Gaskill* v. *Forest Home Cemetery Co.*, 101 N. E. 219 (Ill.).

The principal case raises the question whether the cemetery is a public-service company under duty to serve all the public without discrimination.